

1 BY MR. HAVENS:

2 Q So you are discussing the needs of your company. You
3 talked about getting from Maritime permission to cover up to county
4 borders and you had to put a special site with directional antennas
5 and so forth.

6 A Yes.

7 Q Is that based upon to your knowledge, a written
8 agreement or contract with Maritime?

9 A I believe so. Yes.

10 Q And why is it that there's a limitation? Do you know
11 why there's a limitation for this site-based license based upon a
12 county border?

13 MR. ENGEL: Objection. That's a legal conclusion.

14 JUDGE SIPPEL: That's a legal conclusion.

15 MR. HAVENS: What knowledge do you have which by which
16 you believe you are limited to a county border?

17 JUDGE SIPPEL: You asked a question of what this witness
18 does. That's -- and that's it. You can't ask him about what
19 advice he gets or what this insight and this kind of stuff. He's
20 established himself as being qualified to do the job that he does.
21 Ask questions about how he does the job.

22 BY MR. HAVENS:

23 Q How do you do the job to determine placement of
24 stations in geography up to a county border or whatever geographic
25 limitations you have?

1 A I limited our use to our communications towers without
2 building anymore. I submitted it to -- I can't remember the name
3 -- Maritime.

4 Q Maritime. Yes.

5 A And he told me that only issue with any tower or issue
6 we had, was it plum, which is on the border of another county. And
7 I forget the exact parameters he sent me but it definitely needed
8 a directional antenna. And I got some help from the people that we
9 would purchase the radios, with their engineering group, and came
10 up with a good directional antenna that would meet their needs and
11 wouldn't overstep the bounds of the FCC license.

12 Q I have one more general question that might have a
13 couple subparts.

14 JUDGE SIPPEL: All right. Take them one at a time.

15 BY MR. HAVENS:

16 Q It sounds like a real simple question but it's leading
17 somewhere. The FCC issues licenses for AMTS radio communications.
18 Are you aware of that?

19 A Yes.

20 Q Have you ever seen a copy of the AMTS license that
21 Maritime has, which is the basis of your using the spectrum? Have
22 you seen a copy of that license?

23 A For the 220 spectrum?

24 Q For AMTS, which is 217 and 219 megahertz. And it is
25 not 220 megahertz.

1 A I'm sorry. Excuse me, I thought it was a 200 spectrum.
2 That's what they refer to. I apologize. I have not seen that
3 license. I was told that we were leasing it ; I was supposed to
4 get them and I never received them.

5 Q Do you mean you asked Maritime for a copy and they
6 didn't --

7 A I asked my legal department for it and it was coming
8 and then, all of a sudden, all this came into play and I was told
9 by the legal department that I was legally able to build them. So
10 that's what I did. I built our 220, or our 217 and 219 spectrum.

11 Q Did the legal department give you any written
12 guidelines, if they didn't give you a copy?

13 MR. ENGEL: Objection.

14 MR. HAVENS: It's not a legal question.

15 JUDGE SIPPEL: Well, you get legal advice from the
16 legal department.

17 MR. HAVENS: Well, you didn't let me finish. If you
18 could please just let me finish and then -- what I'm saying is --

19 JUDGE SIPPEL: You're a patient man.

20 BY MR. HAVENS:

21 Q The license has technical details on it and, if you
22 didn't get that --

23 A They gave me --

24 Q -- did somebody, and I won't use the word legal, did
25 some other people give you a description or summary of the

1 technical details on the license?

2 A Yes. I would --

3 MR. ZDEBSKI: Your Honor --

4 THE WITNESS: I knew --

5 (Simultaneous speaking)

6 JUDGE SIPPEL: Just a second, sir. Your counsel is --

7 MR. ZDEBSKI: Your Honor, I'm not sure if I'm allowed
8 to say anything.

9 JUDGE SIPPEL: Yes, you are.

10 MR. ZDEBSKI: Okay.

11 JUDGE SIPPEL: You're his counsel, is that right?

12 MR. ZDEBSKI: Yes, sir. I object to any question that
13 --

14 THE COURT REPORTER: Could you come to the main table,
15 sir?

16 MR. ZDEBSKI: Oh, I object to any question that seeks
17 either the substance of the legal advice or any communication that
18 was exchanged between Mr. Pillar and Duquesne in-house law
19 department and their outside counsel.

20 JUDGE SIPPEL: All right. And your name?

21 MR. ZDEBSKI: Charlie Zdebski, counsel for Duquesne
22 Light Company.

23 JUDGE SIPPEL: Have a seat at the table.

24 MR. ZDEBSKI: Thank you.

25 JUDGE SIPPEL: Okay. I sustain that objection. He's

1 not going to testify at all about this, the way you're going with
2 this. Move on to something else.

3 MR. HAVENS: Do you know the difference between an FCC
4 AMTS geographic license and an FCC AMTS site-based license?

5 MR. ENGEL: Objection. Calls for a legal conclusion.
6 Relevance.

7 JUDGE SIPPEL: I'm not so sure about that. I'm going
8 to let him answer it, if you can. If you can, sir. You want him
9 to repeat the question? Do you know what he said?

10 THE WITNESS: I think I do but I'm not sure. Can you
11 phrase it in a little different way, please?

12 MR. HAVENS: Do you know the difference -- I don't know
13 if I can. It's as simple --

14 JUDGE SIPPEL: Try again, Just try saying it again.

15 BY MR. HAVENS:

16 Q Do know the difference or anything about an FCC-issued
17 AMTS geographic -- that's the term used for describing a class,
18 geographic license and an FCC-issued "site-based" AMTS license?

19 A I believe so.

20 Q Could you please --

21 A A regional license or geographic regional license, is
22 that what you called it? It pertains to an area and a site-license
23 pertains to that tower site, I believe. I may be wrong.

24 Q And which type of license does Maritime have, which
25 it's providing --

1 MR. KIRK: Objection, Your Honor. Again, as I
2 previously stated. This goes well beyond the scope of his
3 testimony.

4 JUDGE SIPPEL: Sustained. I'll sustain. I think we're
5 finished here, Mr. Havens. I mean, Mr. Kirk has been patient with
6 me, too. I think this is it. Does anybody else have redirect now
7 for this witness?

8 MR. ENGEL: Court's indulgence, Your Honor. Nothing
9 further from the Bureau, Your Honor.

10 JUDGE SIPPEL: All right. Time's a wasting, gentlemen.

11 MR. KELLER: I don't have any questions, Your Honor,
12 but I want to address one thing. The Exhibit, EVH Exhibit 209, and
13 I think this was true of one or two exhibit that we released
14 yesterday. I would note that I'm not sure that this is the most
15 current version of the license. It even shows that it's issued to
16 Mobex Network Services.

17 I think, since then, the license has been assigned
18 first to Maritime and, under Maritime's debt, they're in
19 possession. I'd never raised the objection because the technical
20 information in the license that's being referred to is not
21 different. I just want the record to note that this is not the
22 most current version of the license.

23 JUDGE SIPPEL: So noted. Okay. There being nothing
24 further, Mr. Pillar, you're excused as a witness. Thank you very
25 much.

1 THE WITNESS: Thank you.

2 JUDGE SIPPEL: I hope you haven't been too discomfited
3 by this. But go forward and have a good day.

4 THE WITNESS: Thank you.

5 JUDGE SIPPEL: Okay. What's next?

6 MS. KANE: Your Honor, the Bureau rests.

7 JUDGE SIPPEL: And you have nothing further to offer,
8 Mr. Stenger? Mr. Havens? I'll take that as --

9 MR. STENGER: Mr. Calabrese is not here, Your Honor.
10 As far as our exhibits are concerned, as per our pending exhibits,
11 I move the admission of those pending exhibits that I used in my
12 cross-examination.

13 JUDGE SIPPEL: Which ones are those?

14 MR. STENGER: Now, I'd have to go back and, you know,
15 when we get the transcript and I see which ones I used with which
16 witnesses, I would move those so that the testimony makes sense.

17 MS. KANE: Your Honor, he didn't move to admit any
18 exhibits at the time.

19 MR. STENGER: Excuse me. Can -- Your Honor, can I
20 please --

21 JUDGE SIPPEL: Yes. Yes. Yes.

22 MR. STENGER: May I please finish?

23 JUDGE SIPPEL: Yes. Ms. Kane, let the man finish.

24 MR. STENGER: As far as Ms. Kane's statement that, oh,
25 I didn't have a witness to introduce all these documents, Ms. Kane

1 had no witness to introduce all of her documents. I sat here for
2 two days. I didn't hear her put on a witness to introduce her
3 documents. You admitted all of her exhibits for whatever purposes.
4 They were admitted.

5 JUDGE SIPPEL: Well, that was at the admission session.

6 MR. STENGER: Yes, but I don't recall the Bureau using
7 any of their documents for anything. So, on the theory that --

8 JUDGE SIPPEL: There was no objection.

9 MR. STENGER: I do object. I did object to their
10 entire set of exhibits and you admitted them over my objection.

11 JUDGE SIPPEL: The record will speak for itself.

12 MR. STENGER: Okay. So all I'm saying, Your Honor, is
13 that I would like to have an opportunity to review the transcript,
14 see what pending exhibits. Obviously, my admitted exhibits are
15 already admitted. Review the transcript. See what pending
16 exhibits I used in cross and then move the admission of those
17 exhibits.

18 JUDGE SIPPEL: So --

19 MR. STENGER: Pardon me?

20 JUDGE SIPPEL: There's just two other items in admitted
21 exhibits.

22 MR. STENGER: Yes. I mostly used admitted exhibits.
23 But, to the extent that used any of the pending exhibits, I would
24 like to review the transcript and see that and then I'll give you
25 a report as to which ones I used.

1 JUDGE SIPPEL: Well, hold on just a second. Well, some
2 of my assistants are checking notes and we don't seem to have any
3 notation of what you're saying.

4 MS. KANE: Your Honor, if I could --

5 JUDGE SIPPEL: Wait just a second. Wait just a second.
6 There is a pending motion I told the Bureau to hold in abeyance.
7 Ms. Kane has moved to exclude or to strike all of the pending
8 exhibits. And I'm going to grant that motion subject to any
9 conflict you find with the transcript. And then we'll take those
10 up one at a time. In other words, you will have an opportunity to
11 introduce any of those exhibits, if you find them, because we can't
12 locate them in our notes.

13 MR. STENGER: I understand, Your Honor. I understand.

14 JUDGE SIPPEL: And my folks take pretty good notes.

15 MR. ENGEL: Your Honor, if I might.

16 JUDGE SIPPEL: Yes, sir.

17 MR. ENGEL: You could simply ask the Clerk which
18 exhibits she's asked to have stamped and hand to the witness. It's
19 a whole process.

20 JUDGE SIPPEL: I'm not sure if we're that far ahead --
21 no.

22 MR. ENGEL: None.

23 JUDGE SIPPEL: That's not going to work.

24 MR. ENGEL: There were zero. They actually moved for
25 the admission of no exhibits except for there was one license copy,

1 Your Honor, and Your Honor struck, that. You denied that. There
2 were no other documents that Your Honor admitted in this hearing,
3 Your Honor.

4 MR. STENGER: That's not the way this proceeding's
5 worked and I exchanged emails with you, Mr. Engel. I exchanged
6 emails with Mr. Engel before the hearing that we weren't going to
7 stand up, take documents out of books, hand them to the witness.
8 That we were going to use books and that's what we did. We used
9 books. We didn't take documents out and stamp them and hand them
10 to the witness.

11 Everybody that's been sitting here for two days knows
12 that and I really object to this kind of abusive, constant
13 interruption from Mr. Engel about nothing because that's not the
14 way the hearing proceeded. No one pulled documents out of books,
15 stamped them and handed them to the witness. We all agreed that we
16 would use the binders and that's what we did.

17 MS. KANE: Your Honor, if I may, in your Order on
18 Evidentiary Rulings, you said, for the pending exhibits, which were
19 all of the ones in this document, that you would admit them subject
20 to a satisfactory proffer of relevance at the hearing. There has
21 been no such satisfactory proffer of relevance for any of the
22 documents in the pending exhibits --

23 MR. STENGER: There was no proffer.

24 MS. KANE: -- during the hearing. We have now
25 concluded all of the testimony and the hearing. There would be no

1 basis for him to make a satisfactory proffer of relevance.

2 MR. STENGER: Nonsense. When I used the document in
3 cross-examination, that was its relevance.

4 JUDGE SIPPEL: You have to let opposing counsel finish.
5 That's the first rule of etiquette. Didn't they teach you that --

6 MR. STENGER: I'm sorry, Your Honor.

7 JUDGE SIPPEL: -- at Chadbourne? Oh, you're going to
8 be in trouble.

9 MS. KANE: Your Honor --

10 JUDGE SIPPEL: With the Chadbourne partners, not with
11 me. Yes. Go ahead.

12 MS. KANE: During any point in time in which he used an
13 EVH pending exhibit, and personally I don't recall. I don't have
14 it in my notes that he used a specific one and that he was able to
15 satisfactorily proffer an offer of relevance for the use of that
16 document. So, in the absence of that, based on your own ruling,
17 Your Honor, none of these documents should be admitted as evidence
18 in this case.

19 JUDGE SIPPEL: Well, I said that I think very clearly.

20 MR. STENGER: The Judge has already ruled. Is she
21 objecting for reconsideration?

22 JUDGE SIPPEL: Don't use those --

23 MR. STENGER: Didn't you already rule?

24 JUDGE SIPPEL: Don't use personal pronouns.

25 MR. STENGER: Is the Bureau petitioning for

1 reconsideration?

2 JUDGE SIPPEL: And no smirking allowed either. My
3 ruling's been made. We find no record in our notes, bench notes of
4 any of those documents having been proffered or argument being made
5 on them for admission into evidence. If you find something in the
6 transcript to the contrary, you can file an appropriate motion to
7 move the document into evidence.

8 MR. STENGER: Thank you, Your Honor.

9 JUDGE SIPPEL: That's all that's going to happen.
10 There's nothing further I take it?

11 MS. KANE: There's a few minor procedural issues, Your
12 Honor, that we'd like to take up.

13 JUDGE SIPPEL: Well, for purposes of the hearing in
14 this case on Issue G under the Hearing Designation Order, this
15 hearing is finished, closed, gone, period.

16 MR. STENGER: Your Honor --

17 JUDGE SIPPEL: Now, you want to pick up procedural
18 points, housekeeping things to do, let's talk about that.

19 MS. KANE: The first thing, Your Honor, is that we'd
20 like to move to strike Havens' memo on documents in the public
21 domain that he filed yesterday as moot. Now that his company's
22 counsel has signed onto the protective order, the issues that he
23 raised in that motion are moot and we do not believe that the
24 presiding Judge and his staff should be burdened with addressing
25 that motion, nor, frankly, that the Bureau should be required to

1 file something in opposition to it.

2 JUDGE SIPPEL: You already filed the motion?

3 MR. STENGER: No, Your Honor. It's not moot because --

4 MS. KANE: Mr. Stenger doesn't represent Mr. Havens.

5 I thought that's what he had said. In which case, this was
6 Mr. Havens' motion and he filed it pro se.

7 MR. STENGER: Can I get a word --

8 JUDGE SIPPEL: No, not yet.

9 MS. KANE: Mr. Stenger has taken a dual role in this
10 hearing multiple times, you know, representing Mr. Havens in Mr.
11 Havens' apparent separate interests.

12 JUDGE SIPPEL: That's why I treat them as such, like
13 they're coupled.

14 MS. KANE: I understand, Your Honor, but this is
15 something that, when we raised the concern earlier about Mr. Havens
16 representing himself pro se and Your Honor instructed him that he
17 had to identify his very specific interests that were distinct from
18 his company's interests, he's yet to do that. And he has not done
19 that at any point in time during this hearing.

20 And, so, going forward it is a grave concern to the
21 Bureau how this is going to proceed with Mr. Havens having counsel
22 for his parties and participating pro se at the same time, just for
23 these kinds of very issues that we're addressing right now.

24 JUDGE SIPPEL: All right. Mr. Havens and Mr. Stenger
25 are joined at the hip. So let's not spend a lot of time fighting

1 that one.

2 MR. STENGER: Your Honor, I don't know how --

3 JUDGE SIPPEL: Mr. Havens, what are you going to do
4 with your motion.

5 MR. STENGER: Excuse me, Your Honor. I've been accused
6 of representing Mister --

7 JUDGE SIPPEL: Who are you representing now?

8 MR. STENGER: I'm representing my clients.

9 JUDGE SIPPEL: Who are they?

10 MR. STENGER: Environmental and Verde.

11 JUDGE SIPPEL: They didn't file any motions.

12 MR. STENGER: I'm the one who signed the protective
13 order.

14 JUDGE SIPPEL: Yes, but they didn't file any motions.

15 MR. STENGER: But I'm the one who signed the protective
16 order on behalf of those clients. I'm pointing out, Your Honor --

17 JUDGE SIPPEL: That was the first thing that you did in
18 this case.

19 MR. STENGER: Thank you, Your Honor. But Mr. Havens
20 didn't sign it and he couldn't sign it.

21 JUDGE SIPPEL: Are you representing him now?

22 MR. STENGER: No, but I'm telling you I'm clarifying
23 the record. Mr. Havens --

24 JUDGE SIPPEL: Mr. Havens -- you've got him standing
25 out there in the cold.

1 MR. STENGER: He didn't sign --

2 JUDGE SIPPEL: You're not representing him but you're
3 still talking about him. This does not make to me.

4 MR. HAVENS: I'm here to talk.

5 JUDGE SIPPEL: Well, he's talking. The two of you
6 cannot play this.

7 (Simultaneous speaking)

8 MR. STENGER: I just want to point that I'm the one
9 that --

10 JUDGE SIPPEL: Throughout the trial, you've been
11 consulting him. You can consult him as normally the lawyer/client
12 relationship is carried out. We're wasting so much time.

13 MR. STENGER: I am the one whose time --

14 MR. HAVENS: I'm simply wanting to respond to Ms. Kane.

15 JUDGE SIPPEL: I'm through. You are?

16 MR. HAVENS: Yes, I am.

17 JUDGE SIPPEL: Then answer.

18 MR. HAVENS: Ms. Kane --

19 JUDGE SIPPEL: You know what the question is, the
20 motion, your motion?

21 MR. HAVENS: I know that.

22 JUDGE SIPPEL: Okay. I'm sorry.

23 MR. HAVENS: If you'd let me talk --

24 JUDGE SIPPEL: No. I'm just trying to be sure we're
25 talking about the same thing.

1 MR. HAVENS: Well, then, if you let me say something --

2 JUDGE SIPPEL: Yes, sir.

3 MR. HAVENS: -- I think I might speak.

4 JUDGE SIPPEL: Yes, sir. Then speak.

5 MR. HAVENS: She's talking about the motion I filed
6 yesterday morning, after, at the end of Monday, I specifically
7 asked you, Your Honor --

8 JUDGE SIPPEL: Yes.

9 MR. HAVENS: -- that, if I presented a memo or anyone
10 else did on the issue that I did present, which is the documents
11 labeled "Confidential" or "Highly Confidential" under the
12 protective order versus documents that I obtained in public
13 records, PACER and other public records. I did that the following
14 morning.

15 I asked you Monday that, if I were to do that, would it
16 be moot for the purpose of this hearing and you said, no, it
17 wouldn't be moot. So I did that. Now, Ms. Kane has her motion or
18 whatever she has and I'm opposing that.

19 My request is you rule on the request or motion I
20 submitted yesterday morning. As far as her --

21 JUDGE SIPPEL: I can rule on it right now.

22 MR. HAVENS: Can I finish?

23 JUDGE SIPPEL: Well, yes, but if I'm going to rule on
24 it, why do you need to talk me more about it?

25 MR. HAVENS: Because of different points you made.

1 JUDGE SIPPEL: All right.

2 MR. HAVENS: She elaborated beyond that motion and made
3 statements that I have never identified the difference between
4 myself and companies --

5 JUDGE SIPPEL: Go ahead. I'm listening. I know you're
6 being interrupted by Mr. Stenger but that's probably a
7 consultation. I'm sorry.

8 MR. HAVENS: Thank you for that. Ms. Kane represented
9 to you for the Bureau that I have never responded and described to
10 you the difference between myself and my company. And I, in fact,
11 did that. It's in the record. Her statement to you is false. So
12 I'm responding to that.

13 JUDGE SIPPEL: Well, you mean, she's in error, not that
14 she's false.

15 MR. HAVENS: Excuse me and my layman street language.
16 I call something false. That's my language. If you want to use in
17 error --

18 JUDGE SIPPEL: I'm just trying to invite you into the
19 parlor.

20 MR. HAVENS: Well, I'm inviting you into my parlor.
21 Thank you. I think my parlor is more straightforward. Excuse me.

22 JUDGE SIPPEL: All right.

23 MR. HAVENS: I'm telling my First Amendment Rights
24 here.

25 JUDGE SIPPEL: Yes, sir.

1 MR. HAVENS: The motion is by me, pro se. It is not on
2 behalf of my companies. I'm a party here, pro se. The Commission
3 recognized that. It took years, I believe, for you to decide upon
4 that but, apparently, you let me attend this hearing pro se as a
5 party. My motion was by myself. I didn't sign a protective order
6 and I'm asking you to rule upon that.

7 JUDGE SIPPEL: Are you finished now?

8 MR. HAVENS: Yes.

9 JUDGE SIPPEL: The motion is called Memo on Documents
10 Alleged Confidential Under the protective order but lawfully in the
11 public domain. And I believe that was filed on the -- well, it
12 says the date -- it was filed on the 10th of December and -- by
13 yourself. It was handed up to me at the bench and I said I would
14 consider it.

15 But then, after that was -- transpired and we moved on
16 from that, your client -- the attorney for EVH, if you will, Mr.
17 Stenger, was generous enough to sign the protective order, so that
18 we could proceed.

19 MR. HAVENS: He's not my counsel.

20 JUDGE SIPPEL: So EVH is --

21 MR. HAVENS: He's not my counsel. I'm a distinct
22 party.

23 JUDGE SIPPEL: You can say that until you're blue in
24 the face.

25 MR. HAVENS: I will.

1 JUDGE SIPPEL: EVH is EVH. I know who EVH is. Your
2 counsel signed the protective order.

3 MR. HAVENS: EVH's counsel --

4 JUDGE SIPPEL: Wait a minute. You think you're not
5 bound by that protective order? Do you think you can read these
6 documents that are confidential?

7 MR. HAVENS: No. I didn't sign a protective order.

8 MR. STENGER: What he's saying, Your Honor, is that he
9 want -- his motion says that he should be able to have access to
10 documents, himself, because they're public. That's what his motion
11 says. The fact that I've signed the protective order, which she's
12 saying, now that Mr. Stenger has signed the protective order, his
13 motion is moot.

14 It's not moot because he's saying that he should be
15 able to look at documents that are in the public domain, in the
16 bankruptcy case, turned over in FOIA requests. And that's not
17 mooted by the fact that I've signed the protective order. The
18 protective order doesn't allow me to show him any of those
19 documents.

20 And what he's asking Your Honor to say is that those
21 documents that are public domain that he's obtained he can use, as
22 pro se, on his own behalf. I don't see how me signing the
23 protective order moots his motion at all. In fact, it puts it in
24 starker context that, now, I can look at the documents but he can't
25 because you still haven't ruled on his motion.

1 MS. KANE: Your Honor --

2 MR. STENGER: It's not moot.

3 JUDGE SIPPEL: It's moot. It's moot. It's moot.

4 There's nothing really to discuss about it. The protective order
5 has been signed. Mr. Havens apparently has access to other sources
6 of information that I can't control.

7 MR. HAVENS: I identified it. I identified it that --
8 (Simultaneous speaking)

9 JUDGE SIPPEL: Well, if you're not going to let me
10 finish, that's going to relieve your problem. In fact, we're
11 finished with this subject. What's the next order of business?

12 MS. KANE: Your Honor, there's still a pending motion
13 for summary decision, which I understand you had that's been filed
14 by EVH. So, both Mr. Havens', personally, and his two companies,
15 Environmental and Verde Systems, which I understand from one of
16 your recent orders you were deferring a decision on either whether
17 to even entertain the motion or whether to rule on the motion.

18 And we wanted to get some clarification from Your Honor
19 as to whether you were going to entertain that motion and, if so,
20 if we could institute a pleadings schedule so that the Bureau would
21 have an opportunity to oppose it, pursuant to the rules because we
22 have not yet even had an opportunity to do so.

23 JUDGE SIPPEL: Here's how that works. I wanted to hold
24 it in abeyance, so I could find out more facts from this
25 proceeding. I think I have and so, what I'm going to require is

1 that both parties submit proposed findings and reply findings of
2 fact, not of law. The arguments on the law will wait until after
3 the conclusion of the second session.

4 As far as findings of facts, two reasons: first of all,
5 I want the proposed findings of fact filed immediately after the
6 hearing. I mean there's going to be time to do the work because I
7 want to be sure that this is fresh in counsel's mind and, also,
8 anybody appearing pro se, that it doesn't become stale. So I want
9 that fresh in. I want that information fresh.

10 That is the information, the fact information upon
11 which I would base a consideration as to whether or not I want
12 further briefing on that motion for summary or just how I want to
13 proceed on it. So right now the summary is still in abeyance.
14 There's no need to file any opposing motions or there are no
15 filings required at all with respect to that summary decision
16 motion. And focus, if you will, on proposed findings of fact.

17 JUDGE SIPPEL: So, tell me how many days from the
18 delivery of the transcripts, let's say the date of the final
19 transcript, today's transcript in other words, how much time do you
20 need from the date of delivery of the last transcript, do you
21 think, to complete a set of proposed findings on both sides? It
22 will be the same day, the same time.

23 MS. KANE: Well, I think, Your Honor, I just want to
24 clarify for the record that, if I understood your process yesterday
25 that you outlined about how we were going to handle confidential

1 treatment of the transcripts --

2 JUDGE SIPPEL: Oh, yes.

3 MS. KANE: -- when you're talking about final
4 transcripts, are you talking about a final transcript from the
5 reporter or are we talking about final transcripts after the
6 parties have had an opportunity to determine what's a confidential
7 transcript and what is the public transcript?

8 JUDGE SIPPEL: Well --

9 MS. KANE: Regardless, I still think the Bureau would
10 probably need approximately two weeks, maybe three weeks, depending
11 on, you know, what we're willing to negotiate with that. But a
12 minimum of two weeks to review whatever turns out to be the final
13 transcript to prepare the proposed findings.

14 JUDGE SIPPEL: Well, you're going to get 30 days, it
15 just depends on where we start. I'm looking for a start date.
16 Here's the deal. Wait just a second now. Everyone's going to have
17 a chance. The non-public version of the transcript, those will be
18 coming in. And on the last day of those -- of the non-public I
19 would think -- I would use as the date to start counting because
20 you can prepare your initial cut on proposed findings. That would
21 be the non-public version.

22 And then, when you get finished combing through the
23 transcript and you take out -- no, you redact all the information
24 that's confidential, then you go back and you do the same thing
25 with your proposed findings. So then you'll write two versions of

1 proposed findings: one for the public record which is redacted and
2 the other for every other purpose.

3 MS. KANE: Oh, I understand that, Your Honor, in terms
4 of having the two separate --

5 JUDGE SIPPEL: So it's just a question of counting the
6 days.

7 MS. KANE: the concern that the Bureau would have, Your
8 Honor, is that this is an information that's been designated
9 confidential by the Bureau. I mean, we could certainly follow what
10 the information has been through the admitted exhibits. But, in
11 terms of what a party who is a party to this case like Maritime or
12 Choctaw or Duquesne or any of these other parties might designate
13 as confidential from the transcript, it would still be unclear to
14 the Bureau.

15 And, until we were able to get that transcript
16 designation from the individual parties, we wouldn't be able to
17 make the determination of what was public and confidential as
18 accurately as we would without waiting for them.

19 MR. KIRK: Your Honor?

20 JUDGE SIPPEL: Hold on just a second. I'll get there.

21 MR. KIRK: In fairness to Mr. Havens, he will not be
22 able to obtain a transcript to draft his proposed findings until
23 we've actually gone through and designated a public version.

24 JUDGE SIPPEL: Yes. But his attorney will have it.
25 I'm not going to allow it.

1 MR. HAVENS: Mr. Stenger is not my attorney.

2 JUDGE SIPPEL: You can say that until you're blue in
3 the face.

4 MR. HAVENS: I will say that until I'm blue in the
5 face. Every time I hear that, I'll say something.

6 JUDGE SIPPEL: All right. I'll take official notice of
7 that fact. Let's move on. Mr. Keller?

8 MR. KELLER: Well, I just want to pick up on Ms. Kane's
9 point. It's not the matter of what I'm designating as
10 confidential. I need to know what we've all agreed and this is now
11 the final confidential version. So we really can't do the two
12 versions until you know what everybody else has designated as well.

13 JUDGE SIPPEL: I'm asking you to compartmentalize.
14 What you do is you get the clean transcripts. Okay? The un-
15 redacted transcripts are going to be delivered to you. Part A of
16 your brain will just take all that evidence, submit proposed
17 findings which are not going to be in the public record. There's
18 no reason why I can't consider any evidence that has gone into this
19 record. There's no reason why you can't consider it, for purposes
20 of arguing your case.

21 Then we get finished with that. Then you're going to
22 go back -- well, hopefully, simultaneously, you will be -- somebody
23 in your organizations, respective organizations will be going
24 through the transcripts with a fine-toothed comb. And then you
25 will agree as to where there's any, if you will, contention about

1 it. You will come to agreement as to what should and shouldn't be
2 redacted.

3 And then you will take what you did with the
4 transcripts and perhaps some of the documents -- I don't think so
5 -- and then you'll take the same proposed findings that have been
6 filed as non-public and you'll make those deletions.

7 MR. STENGER: Your Honor, may I interrupt because I
8 think I can help here, okay? The Bureau seems to be under the
9 misimpression that they're going to have an opportunity to go
10 through the transcript and pick and choose, line by line and page
11 by page, what they want to attempt to exclude my client from
12 reading, okay? That's not what happened.

13 There's only two parts of the transcript that could
14 possibly be designated as non-public: the second half of Mr.
15 Reardon's testimony, where Mr. Havens was not in the room; and the
16 second half of Mr. Trammell's testimony, where Mr. Havens was not
17 in the room.

18 This is not a complex process where they get to go
19 through the transcript and re-decide what they want to say might be
20 confidential. Everything in the transcript Mr. Havens has heard.
21 He was sitting here through the trial. So there's no opportunity
22 for the Bureau to go back and claim that something is confidential
23 in the transcript that Mr. Havens has sat here and heard.

24 So it's very simple. The part of the transcript -- and
25 you read the time when Mr. Reardon started testifying. From that